IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION NO.4205 OF 2005
IN
APPEAL NO.1142 OF 2005
IN
WRIT PETITION NO.2671 OF 2002

Anil R. Joshi — Appellant

vs.

AIR India Ltd. — Respondents

Mr.A.R.Joshi for the appellant-applicant in person.

Mr.C.U.Singh, Senior Counsel with Mr.J.S.Saluja
i/b.M/s.M.V.Kini & Co. for the respondents.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED : 27th January 2006

P.C.

The appellant has taken out this notice of motion praying for the following reliefs:

(a) that respondents be directed to deposit entire legal dues which are due to Appellant (details are enclosed herewith as Ex. 'A') in view of Division Bench Order dated 5th December, 2002 and Supreme Court order dated 8th January, 2003.

(b) that the respondents be directed to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) towards interim relief immediately as applicant is without any income since June, 2005.

2. The appellant appears in person. He submits that even if it be assumed for the time being that dismissal

order dated 6th December, 1996 is valid (the assumption is without prejudice to his contentions in the appeal that the said order is invalid), he is entitled to his dues towards provident fund, gratuity, leave encashment and the interest thereon.

3. In response to the notice of motion taken out by the appellant, reply affidavit has been filed by the respondents through Mrs.R.Roy, Manager (Finance). In paragraphs 2, 3 and 4 the details of the amount due to the appellant towards provident fund, gratuity and wage arrears have been set out. In paragraph 6, the recovery which is to be made from the appellant is mentioned and after adjusting the recovery, it is stated that the net amount of Rs.86,031/- is payable to the appellant.

4. Mr.C.U.Singh, the learned senior counsel, also handed in the calculation of the interest payable on provident fund dues and submitted that without prejudice to respondents' submission that no interest is payable on provident fund after 6th December 1996, if the Court, prima facie, holds that interest is payable then as on 31st January 2006 an amount of Rs.9,87,255.37 is due and payable towards provident fund. In addition to that a sum of Rs.1,00,000/- is payable towards gratuity and a further sum of Rs.1,38,820/- towards wage arrears and overtime arrears of Rs.960/-. Mr.C.U.Singh submitted

that after adjustment of Rs.5,00,000/- which is re-payable by the appellant towards back wages as per his undertaking to the Court, roughly an amount of Rs.6,94,000/- shall be payable to the appellant if the Court is of the view that the interest is payable to the appellant on provident fund.

5. We reflected over the submissions of the appellant and the learned Senior Counsel for the respondents. Even if the dismissal order is assumed to be valid presently that did not entitle the respondents to withhold the provident fund dues. Nothing has been shown by the respondents from the Service Regulations that provident fund dues of a dismissed employee could be withheld. In this view of the matter, prima facie we are of the view that interest on the provident fund shall be payable by the respondents. It appears that a sum of Rs.6,94,000/- is due and payable by the respondents to the appellant towards his outstanding provident fund and interest thereon, gratuity, wage arrears etc.

6. We, accordingly, dispose of this notice of motion by the following order:

(i) A sum of Rs.6,94,000/- (Rupees six lac ninety four thousand) shall be paid by

the respondents to the appellant within 15 days from today subject to an undertaking by the appellant that in case it is ultimately held that no interest is payable on provident fund, he shall refund the excess amount paid to him by way of provident fund.

(ii) The aforesaid payment is without prejudice to the rights and contentions of the appellant in the appeal and without prejudice to the respondents' contention that no payment of interest is payable on the provident fund.

(R. M. LODHA, J.)

(ANOOP V. MOHTA, J.)